

Application No. 09/991,389
Amendment "C" dated August 15, 2005
Reply to Office Action mailed June 2, 2005

REMARKS

The Office Action, mailed June 2, 2005, considered and rejected claims 1-18 and 49-65. Claims 1-9, 11-18, 52-54, 58-63 and 65 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,721,827 (Logan et al.) in view of U.S. Patent Publication No. 2002/0128904 (Carruthers et al.) Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,721,827 (Logan et al.) and U.S. Patent Publication No. 2002/0128904 (Carruthers et al.) in view of Applicant Admitted Prior Art. Claims 49, 55, and 64 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,721,827 (Logan, et al.) and U.S. Patent Publication No. 2002/0128904 (Carruthers et al.) in view of U.S. Patent No. 5,999,912 (Wodarz et al). Claims 50 and 56 were rejected under 35 U.S.C. as being unpatentable over U.S. Patent No. 5,721,827 (Logan et al.), U.S. Patent Publication No. 2002/0128904 (Carruthers et al.) in view of U.S. Patent No. 5,999,912 (Wodarz et al), in view of U.S. Patent No. 6, 813,775 (Finseth et al.) Claims 51 and 57 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,721,827 (Logan, et al.) and and U.S. Patent Publication No. 2002/0128904 (Carruthers et al.) in view of U.S. Patent No. 5,999,912 (Wodarz et al), in further view of U.S. Patent No. 6,012,984 (Roseman).¹

By this paper, Claim 1 has been amended² such that claims 1-18 and 49-65 remain pending. Claim 1 and claim 11 are the only remaining independent claims at issue, with claim 1 being directed to a method and claim 11 being directed to a corresponding computer program product for implementing the method of claim 1.

Embodiments of the present application are directed towards implementing an advertising system for use with television equipment such as set top boxes, satellite television boxes, cable television boxes and the like. Modern television equipment often includes an electronic program guide that displays television schedules and related information.

¹ Although the prior art status and some of the assertions made with regard to the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status and assertions made with regard to the cited art, as well as any official notice, which was taken in the last response, at any appropriate time in the future, should the need arise, such as, for example in a subsequent amendment or during prosecution of a related application. Accordingly, Applicants' decision not to respond to any particular assertions or rejections in this paper should not be construed as Applicant acquiescing to said assertions or rejections.

² The amendment made to claim 1 is not a narrowing amendment surrendering any claim scope, but rather provides a clarification to explicitly include details regarding the data file that were previously included as inherent limitations in a preceding element.

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Embodiments of the present application allow for a store of advertisements to be delivered to television equipment, such as at a home viewer's equipment, and to deliver selected advertising content to the home viewer by displaying the advertising content in conjunction with content such as the electronic program guide.

The advertising content is selected, *at the home viewer's equipment*, by using data delivered with the advertising content that includes data defining for each advertisement, the advertising type, relative or absolute weight, location, and schedule for display of the advertisement content. By selecting the advertising content at the home viewer's equipment, there is no need for a persistent online connection to continue receiving advertising content. Rather, the content can be delivered in bursts and displayed at a time defined by the advertising type, relative or absolute weight, location, and schedule for display of the advertisement content.

For example, claim 1 recites that advertising content is delivered to a viewer according to an advertising plan executed in a system having a processor. The recited method of claim 1 also includes receiving a schedule defining a time to display an advertisement, as well as a location and indicator of advertising type. An advertising weight is also received that is used to determine a frequency to display the advertising during a period of time. In response to receiving this information, the system generates a data file defining, for each advertisement, the advertising type, weight, location and schedule for display, wherein defining the weight comprises defining an absolute weight for each committed advertisement that corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight to each flexible advertisement that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement. The method also includes *delivering* the advertisement content and the data file, *including definitions of advertising type, absolute or relative weight, location and schedule for display, to at least one receiver* and such that the advertisement is displayed according to the frequency defined by the weight of the advertisement within the defined period of time.

This same method is also incorporated within computer program product claim 11.

As admitted in the office action, Logan does not teach or suggest wherein defining the weight comprises defining an absolute weight for each committed advertisement that

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corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight to each flexible advertisement that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement; and delivering the advertisement content and the data file, including definitions of advertising type, weight, location and schedule for display, to at least one receiver and such that the advertisement is displayed according to the frequency defined by the weight of the advertisement within the defined period of time. As such, Logan further cannot teach delivering the advertisement with a data file including absolute or relative weight to at least one receiver.

To compensate for what is not disclosed by *Logan*, the office action cites *Carruthers*. *Carruthers* is directed to a system for scheduling online targeted content. The system described by *Carruthers* includes clients 10 that receive content by accessing servers. See Figure 1 and paragraph [0019]. Content is delivered to and displayed on a screen at the client 10. See paragraph [0017]. *Carruthers*, in direct contrast to what is recited by the claims of the present application, does not disclose or suggest that the clients 10 are delivered a data file, *including definitions of advertising type, relative or absolute weight, location and schedule for display*. Rather, *Carruthers* discloses that an On-Demand Scheduler 70 (at a server 16 remote from the client) dynamically constructs delivery schedules for individual users on user login. Paragraph [0037].

Carruthers further discloses that "[a]dvertisements (not data files including weight, etc.) in the individual list are retrieved by the CDS server 74 from the remote database 76 and sent to the subscriber in the specified order." The client 10 disclosed by *Carruthers* includes browsers, which *Carruthers* describes as "known software tools used to access the server." Page 2, paragraph [0019]. *Carruthers* gives examples such as Netscape Navigator and Microsoft Internet Explorer. *Id.* These browsers are typically passive in that they simply display whatever content is delivered from a server and thus have no need for the data file recited by the claims of the present application.

The disclosure of *Carruthers* also fails to teach or suggest delivering a data file, including relative or absolute weight, to a receiver module configured to display the advertisement content of the advertisement in accordance with the data file in such a way as to satisfy the advertising

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impression goal, and such that the advertisement is displayed according to the frequency defined by the weight of the advertisement within the defined period of time.

In regard to the forgoing, Applicants remind the examiner that the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143. However, *Carruthers* in combination with *Logan* simply does not teach or suggest what is recited by the claims for at least the reasons provided above.

Applicants further submit that the combination of *Logan* and *Carruthers* is improper. References may not be combined where a reference teaches away from their combination. MPEP 2145 (X)(D)(2). *Logan* discloses a system that downloads a session schedule file and then issues a download request for program segments that are not already in the player's local storage. Col. 5, lines 46-49. Thus, *Logan* discloses downloading substantial amounts of material for later playback. In fact, *Logan* suggests using high bandwidth connections to download the program segments. Col. 6, lines 10-44. *Carruthers* teaches away from such downloads by teaching that the system uses on-demand scheduling to reduce the communication volume over a network. Paragraph [0040]. This is in direct contrast to what is taught by *Logan* as well as what is claimed in the claims of the present application. Thus, *Carruthers* should not be combined with *Logan*.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are not, therefore, anticipated or made obvious by *Logan* and/or *Carruther* alone or in combination. The remaining references cited by the examiner do not compensate for the deficiencies of *Logan* and/or *Carruther*³.

Furthermore, although the foregoing remarks have been focused primarily on the independent claims, it will be appreciated that all of the rejections and assertions of record with respect to the independent claims, as well as the dependent claims, are now moot, and therefore need not be addressed individually. However, in this regard, it should be appreciated that Applicant does not necessarily acquiesce to any assertions in the previous Office Action that are not specifically addressed above, and hereby reserves the right to challenge those assertions at any appropriate time in the future, should it arise, including any official notice.

³ *Wodarz* is only cited for showing location defining a particular location on a screen and a display area. *Finseth* is only cited for showing an EPG that is an HTML target. *Roseman* is only cited for showing a game that is an HTML target.

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In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 15 day of August, 2005.

Respectfully submitted,



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